

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 JIE YU, ET AL.,

13 Case No. C 07-02274 PVT

14 Plaintiffs,

15 v.
16 **ORDER DENYING STIPULATION TO
DISMISS WITH PREJUDICE FOR
FAILURE TO FILE A STATEMENT
SUPPORTING THE FAIRNESS OF THE
SETTLEMENT OR A STIPULATION OF
DISMISSAL UNDER RULE 41(a)(1); AND
ORDER TO SHOW CAUSE**

17 SOUTHLAND TASTE
18 RESTAURANT, INC., ET AL.,

19 [Docket No. 50]

Defendants.

20 On September 18, 2008, the parties stipulated to dismiss with prejudice the above-
21 captioned action. The Fair Labor Standards Act ("FSLA" or "Act") requires employers to
22 pay their employees time and one-half for work exceeding forty hours per week. *See 29*
23 U.S.C. § 207(a)(1). An employee's claims under the FSLA are non-waivable, and thus may
24 not be settled without supervision of either the Secretary of Labor or a district court. *Yue*
25 *Zhou v. Wang's Restaurant*, 2007 WL 172308 at *1 (N.D. Cal. Jan. 17, 2007); *See also Lynn's*
26 *Food Stores, Inc. v. United States, et al.*, 679 F. 2d 1350, 1352-53 (11th Cir. 1982); House
27 Report No. 101-664.¹

28 ¹ As used herein, "House Report No. 101-664" refers to House Report No. 101-664, P.L. 101-433, Older
Workers Benefit Protection Act, H.R. Rep. 101-664, H.R. Rep. No. 664, 101st Cong., 2nd Sess. 1990, 1990 WL 200383
(1990). This report reflects Congress' intent that FLSA claims may not be waived or compromised without supervision of

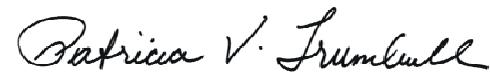
1 Under the FSLA, an award of reasonable fees is mandatory when a settlement of
2 FLSA claims result in a judgment. *See* 29 U.S.C. § 216(b) ("the court in such action shall, in
3 addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's
4 fee to be paid by the defendant, and costs of the action."). Rule 54(a) of the Federal Rules of
5 Civil Procedure defines "Judgment" as "decree and any order from which an appeal lies."
6 Thus, even without a document officially entitled "Judgment," the FSLA's mandatory
7 attorney's fees provision is triggered anytime a settlement of FSLA claims results in a final
8 appealable order of the court. Court determination of whether to award attorney's fees, and if
9 so the amount thereof, is appropriate in connection with the court's review of the fairness of
10 the settlement of FSLA claims.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Stipulation to Dismiss with Prejudice is denied for failure to file a
13 statement supporting the fairness of the settlement or a stipulation of dismissal
14 under Federal Rule of Civil Procedure 41(a)(1);² and
- 15 2. The parties are ordered to show cause on November 18, 2008 at 10AM why
16 they failed to file a statement supporting the fairness of the settlement or a
17 stipulation of dismissal under Federal Rule of Civil Procedure 41(a)(1).

18 IT IS SO ORDERED.³

19 Dated: *October 10, 2008*



PATRICIA V. TRUMBULL
United States Magistrate Judge

25 either the Secretary of Labor or a district court.

26 ² Because a stipulation under Rule 41(a)(1) does not involve an order of the court, the provisions of 29
27 U.S.C. § 216(B) requiring attorney's fees is not applicable. The court expresses no opinion as to the enforceability of any
settlement conducted without the approval of either the Secretary of Labor or a district court.

28 ³ The holding of this court is limited to the facts and particular circumstances underlying the present motion.

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28